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PETITION UNDER 28 USC § 2255 TO VACATE; SET ASIDE, OR CORRECT 3.05 W 783 AC 243 (Rev. 2/95) SENTENCE BY A PERSON IN FEDERAL CUSTODY District Southern District of Mississippi UNITED STATES DISTRICT COURT Name of Movant Case No. 3:04cr26WSu Russell Montague Place of Confinement Federal Correctional Institution, Texarkana, TX 75505-7000 UNITED STATES OF AMERICA Russell L. Montague (name under which convicted) MOTION Southern District, 1. Name and location of court which entered the judgment of conviction understanding particles of Jackson Div FILED **UEC 2 7 2005** J. T. NOBLIN, CLERK BY\_ 180 months 3. Length of sentence 4. Nature of offense involved (all counts) 18 USC \$924(1) Theft of firearms, 922(g)(1) Felon in possession of a firearm, 924(c) Use of firearm during the commission of a drug trafficking offense and 26 USC \$5851(d) Possession of an unregistered firearm 5. What was your plea? (Check one) (a) Not guilty (b) Guilty (c) Nolo contendere If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: Counts 1,3: 18 USC §922(j) Trafficking in stolen firearms - dismissed, Count 9: 18 USC §641: Embezzlement of money belonging to the United States - dismissed 6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury (b) Judge only 7. Did you testify at the trial? Yes 🗆 No□ 8. Did you appeal from the judgment of conviction? Yes 🖂

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<u>\$</u>	If you	did appeal, an	nswer the following:	<b>:</b>	Marin Control				·
•	(a) Na	me of court _							
	(b) Re	sult					·		
	(c) Da	te of result		·.		:			
10.		s with respect t	peal from the judgme to this judgment in a			ve you previot	ısly filed any petitic	ons, applicatio	ns, or
11.	If your	answer to 10	was "yes," give the	e following info	rmation:	:			-
	(a) (1)	Name of cour	rt						
	(2)	Nature of pro	oceeding			:	<u>.                                    </u>		
	(3)		ed				<u> </u>		
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	(4)	Did you recei	ive an evidentiary h	hearing on your	petition, applic	cation or mo	tion?		
	<b>( )</b>								
		Date of result		<del></del>		- :			
	•		petition, application	on or motion giv	ve the same inf	ormation:	• •		
	(1)	Name of cour	t			<u> </u>			
	(2)	Nature of pro	ceeding	Same and the same of the same					
<u></u>			1964 - 19			È		ingenie in relative gewond	estate optimization
	(3)	Grounds raise	ed						
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	(5) Result			:		
	(6) Date of result	•		:	- · · · · · · · · · · · · · · · · · · ·	
				· · · · · · · · · · · · · · · · · · ·		
(c)	Did you appeal, to an a or motion?	ppellate federal cour	t having jurisdiction	, the result of action	taken on any petition, ap	plicat
	(1) First petition, etc.	Yes □	] No□			
	(2) Second petition, e	.c. Yes	No □	; ;		
(d)	If you did not appeal fr	om the adverse action	n on any petition,	application or motion	n, explain briefly why you	did n
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					constitution, laws or treation	
			ng each ground. If no	ecessary, you may atta	ch pages stating additional	grou
Uni	forth managing the same	<b>C.</b>		<b>:</b>		
Uni	facts supporting the sam		in this motion wo	u may be barred fro	om presenting additional	<u> </u>
Uni and	tion: If you fail to s	et forth all grounds	m ms monore yo			
Uni and		et forth all grounds	m ms monone yo			
Uni and Cau	tion: If you fail to s at a later date.			tly raised grounds for	relief in these proceeding	gs. Ea
Uni and Cau	at a later date.  For your information, the ment preceded by a letter	ne following is a list our	f the most frequente ground for possib	le relief. You may rai	relief in these proceeding se any grounds which you n	oay ha
Uni and Cau	at a later date.  For your information, the ment preceded by a letter than those listed. Howe	e following is a list our constitutes a separa	f the most frequent te ground for possib in this motion all av	le relief. You may rai		oay ha
Uni and Cau	at a later date.  For your information, the ment preceded by a letter	e following is a list our constitutes a separa	f the most frequent te ground for possib in this motion all av	le relief. You may rai	se any grounds which you n	oay ba
Uni Cau state othe	For your information, the ment preceded by a letter than those listed. However, your allegations that you not check any of these	ne following is a list of constitutes a separatever, you should raise u are being held in cuse listed grounds. If you	of the most frequent te ground for possibility in this motion all avoistody unlawfully.	le relief. You may raisallable grounds (related at the second sec	se any grounds which you n ing to this conviction) on w r relief, you must allege fa	nay ha hich y
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Unitand Cau State State Other base (a)	at a later date.  For your information, the ment preceded by a letter than those listed. However, your allegations that you do not check any of the ion will be returned to your will be returned to your allegations.	te following is a list of cronstitutes a separa ever, you should raise u are being held in cuse listed grounds. If you if you merely checolea of guilty which we	of the most frequent te ground for possibility in this motion all av- istody unlawfully.  Ou select one or motion (a) through (j) or as unlawfully induced	le relief. You may rais allable grounds (relat re of these grounds for any one of the ground	se any grounds which you n ing to this conviction) on w r relief, you must allege fa	nay ha hich y icts. T

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.

Ground one: Defendant's plea of guilty and sent	ence were the result of inef
assistance of counsel.	· ·
Supporting FACTS (state briefly without citing cases or law)	
See attached Memorandum of Points and Autho	rities
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Fround two. Defendant's plea of guilty was not	knowing and voluntary
Ground two: Defendant's plea of guilty was not	knowing and voluntary.
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importing FACTS (state briefly without citing cases or law)	
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Supporting FACTS (state briefly without citing cases or law)  See attached Memorandum of Points and Author	•
Supporting FACTS (state briefly without citing cases or law)  See attached Memorandum of Points and Author	•
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AO 243 (Rev. 2/95) Ground four: \_\_\_ Supporting FACTS (state briefly without citing cases or law) 13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_ No previous appeal, as claims of ineffective assistance of counsel and that a plea of guilty was not "knowing and voluntary" are properly litigated in a 28 USC \$2255 proceeding. 14. Do you have any petition or appeal now pending in any court as to the judgment under attack? Yes 🗆 15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein: (a) At preliminary hearing \_\_\_\_\_ (b) At arraignment and plea \_\_\_\_\_\_John Mark Colette, 401 East Capitol Street, Suite 308, Heritage Building, Jackson, MS 39201 (c) At trial \_\_\_\_\_ (d) At sentencing \_\_\_\_\_

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	(e)	On appeal	
	(f)		
	(g)	On appeal from any adverse ruling in a post-conviction proceeding	
16.	app	ere you sentenced on more than one count of an indictment, or on more than proximately the same time?  No  No	one indictment, in the same court and at
17.		you have any future sentence to serve after you complete the sentence imposes IN	d by the judgment under attack?
	(a)	If so, give name and location of court which imposed sentence to be served in	the future:
٠.			
	(b)	Give date and length of the above sentence:	
		Have you filed, or do you contemplate filing, any petition attacking the judg served in the future? Yes $\square$ No $\square$	
	Wh	nerefore, movant prays that the Court grant petitioner relief to which he or she	may be entitled in this proceeding.
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		Sign	nature of Attorney (if any)
•	I de	eclare under penalty of perjury that the foregoing is true and correct. Executed  (Fate)	on
		× Burt	Signature of Movant
		•	